

OPINION & ORDER
[*re: Jurisdiction*].

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Case No. 1:08-cv-058
Gwin, J.

Michigan Affiliated Healthcare Sys. v. CC Sys. Corp., 139 F.3d 546, 550 (6th Cir. 1998). Both Plaintiff and Defendants argue that this action can be characterized as an enforcement action under 1132(a)(2) and 1132(a)(3). For the Plaintiff to bring an action that falls within these sections, it must be a participant, beneficiary, or fiduciary. See id. at 550. The Plaintiff is the named fiduciary of the plan.

The civil enforcement provisions of ERISA state in relevant part:

- (a) Persons empowered to bring a civil action. A civil action may be brought. . .
- (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409 [concerning a Plan fiduciary's breach of fiduciary duty];
- (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

29 U.S.C. 1132(a).

Count 3 and Count 4 both allege that the Defendant failed to perform its administrative duties in failing to timely process claims and in failing to recommend that properly covered claims be paid. The Plaintiff argues that the Defendant was a fiduciary within the meaning of ERISA. The Plaintiff seeks both legal and equitable relief. These allegations fall within the scope of 1132(a)(2) and (3). As such, the Court finds that it has jurisdiction over these claims.

Moreover, Count 5 of the complaint says that third-party defendant United holds the Plan's funds in trust and that United has refused to pay any claims by its plan participants or return the plan's funds. The Plaintiff seeks equitable relief. The Court finds that this also falls within the civil enforcement provisions of ERISA.

For the foregoing reasons, the Court finds it has jurisdiction to decide counts 3, 4, and 5 of

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the complaint and will exercise pendant jurisdiction over the remaining claims.

IT IS SO ORDERED.

Dated: April 28, 2008

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE